

\$3,000. He had moreover consistently adopted the same position from the moment that he was first confronted with the accusation on the very same afternoon.

While the defendant was not altogether a convincing witness, in the sense that he was evasive when questioned as to his means, he nevertheless adhered firmly enough to his denial. His character was put in issue and there is nothing known against him. Learned counsel for the plaintiffs suggests that the defendant's means were not as great as he would have led me to believe and that therefore it may reasonably be inferred that he was the kind of man who might have been prepared to take advantage of such a mistake as the bank contend took place on this occasion. If the fact that a person's financial standing is such that a windfall of \$27,000 would not be unacceptable is a permissible consideration, it is surely one which must be applicable to a considerable proportion of the bank's customers. Be that as it may, whatever the means of the defendant, in such a case as this he can do nothing more in support of his position than deny that he was overpaid.

Can the plaintiff bank in such a case, in order to put the matter beyond mere suspicion or conjecture, do more than adduce what may be termed internal evidence of their employees? In my opinion, they can. It would, for example, be highly relevant in a case of this nature if the plaintiffs were able to establish some change for the better in the circumstances of the defendant, that he had, for instance, incurred unusual expenditure or had unexpectedly settled outstanding obligations. It may be that such evidence is difficult to obtain but it seems to me that where a defendant of good character is charged with a fraud of this nature something more is required than internal evidence of the bank's employees. In the absence of any such corroborative evidence I am not disposed to disbelieve the defendant's denial.

In all the circumstances of this unfortunate case, I consider that the loss, if any, should rest where it falls. I have already adverted to the practice of the plaintiff bank in permitting cash cheques to be presented and met without the amount being written in words in the body of the cheque. It is unfortunate, but for the purposes of this case irrelevant, that the actual financial loss which is alleged to have been incurred should fall not upon the plaintiff bank, whose procedures contributed to it, but upon a guarantor.

For all these reasons the plaintiffs' claim, in my opinion, must fail, and the action is dismissed with costs.

Action dismissed.

Solicitors: Drew & Napier; Braddell Bros.

YONG PAK YONG v. PUBLIC PROSECUTOR

[A.Cr.J. (Good J.) June 16, 1959]

[Ipoh — Criminal Appeal No. 20 of 1959]

Criminal Law and Procedure — Corporal punishment — Imposition of, where no actual violence or brutality — Exercise of discretion — Judicial notice of what is notorious.

In this case the appellant, a youth of 20, was convicted of the offence of extortion and was sentenced by the learned President to two years' imprisonment and a whipping of 8 strokes. The appeal was against sentence only and was mainly directed to an appeal against the sentence of corporal punishment, being based on the ground that no actual violence was used by him in commission of the crime. In this case it was clear from the evidence that the appellant was an active member of a secret society.

Held: (1) in dealing with a matter of sentence as distinct from considering whether a person ought to be convicted or not of the offence the Courts are entitled to take judicial notice of what is notorious, of what everybody knows;

(2) in cases in which although no violence is actually used, or brutality actually shown, but where violence and brutality are undoubtedly involved (such as secret society extortion demands) the thug who has not had occasion to implement his threat of violence deserves corporal punishment just as much as if he had inflicted it.

Cases referred to:—

(1) *Ho Kin Luan & Anor. v. Public Prosecutor* [1959] M.L.J. 159, C.A.

(2) *Narasingerji Gyanagerji v. Panuganti Parthasaradhi* (1924) 51 I.A. 305; A.I.R. 1924 P.C. 226; I.L.R. 47 Mad. 729; 27 Bom. L.R. 4; 29 C.W.N. 246.

CRIMINAL APPEAL.

R. C. M. Rayan for the appellant.

Raja Azlan Shah (Deputy Public Prosecutor) for the respondent.

Good J. delivering oral judgment: The appellant in this case was convicted of the offence of extortion and was sentenced by the learned President of the Sessions Court, Ipoh to two years' imprisonment, and a whipping of 8 strokes. The appeal is against sentence only and is mainly directed to an appeal against the sentence of corporal punishment, being based on the ground that no actual violence was used by

the appellant in commission of the crime. Counsel for the appellant has drawn my attention to a judgment of the Court of Appeal in another Ipoh case ⁽¹⁾ dealt with by myself of which I was of course well aware, and to which I particularly directed my attention with reference to the present appeal. I have read the words of the learned Chief Justice most carefully, and I bear them in my mind in what I have to say about the sentence in the present case. Two paragraphs in the judgment of the Court of Appeal call for particular study in this connection:

"We were referred by Counsel for the accused to no less than four cases in the course of the last five years, in all of which Judges of the Supreme Court have held that, generally speaking, sentences of corporal punishment should not be imposed except in cases involving violence or brutality on the part of the offender. With those expressions of opinion we agree. The modern tendency of penal procedure and reform is certainly against the imposition of corporal punishment on adults as a retrograde measure. On the other hand we recognise, with regret, the fact that there has been a marked increase of lawlessness in recent times and certain types of offences, particularly extortion, are becoming increasingly prevalent, a deplorable state of affairs which has been acknowledged by the Legislature in the recent enactment of the Prevention of Crime Ordinance.

Whilst, therefore, we adhere to the view already expressed in these Courts on various occasions and while in principle we deprecate the use of corporal punishment except in cases involving violence or brutality, we acknowledge—as, indeed we must—the fact that there may be cases which justify the Courts exercising the discretion, undoubtedly vested in them, of imposing a sentence of corporal punishment even though no actual violence or brutality may have been used. We emphasise, however, that even in such cases the Court should consider long and anxiously before it exercises such a discretion. Each case, of necessity, must depend upon its own facts and upon the character and antecedents of the offender."

The Court then considered the circumstances of the particular case which was the subject of the reference, and decided that in that case they saw no reason for interfering with the discretion of the Magistrate who had not seen fit to impose corporal punishment.

Now, as to the passage itself from the Court of Appeal judgment, I have two observations to make. In the first place, the learned Chief Justice has used in two places the expression "in cases involving violence or brutality." It is clear that he had in mind, when he used that phrase, cases in which violence or brutality has actually been perpetrated by the offender. But I shall in a moment go on to show that there is a particular class of cases in which although no violence is actually used, or brutality actually

A shown, violence and brutality are undoubtedly involved.

The second observation which I would, with the greatest respect, make on the Court of Appeal judgment is that while the learned Chief Justice speaks of the modern tendency of penal procedure and reform being against the imposition of corporal punishment on adults, the kind of people whom I have in mind—when I speak of this particular class of cases—are not adults at all. They are youths, teenagers, or young men in their early twenties who have never developed an adult mentality, who have the minds of small boys and the addiction of small boys to gangsterism, and the tendency of small boys to bullying; but they are much more dangerous and cruel and savage than small boys because they have the means, which they do not hesitate to use, of inflicting grievous hurt, and even death, upon their victims. I say all that because it is perfectly clear from the evidence in this case that the appellant is an active member of a secret society.

In dealing with a matter of sentence as distinct from considering whether a person ought to be convicted or not of the offence, I think that the Courts are entitled to take judicial notice of what is notorious, of what everybody knows. Indeed, I came across recently in an entirely different connection a case in which the Privy Council took judicial notice of the existence of a particular class of contracts in India. That was in *Gyanagerji's case*. ⁽²⁾ Now, how had their Lordships of the Privy Council acquired the knowledge of that class of contracts? Clearly, from having come across them so often in cases coming before their Lordships' Board on appeal. Similarly, we members of the judiciary sitting in these Courts cannot avoid acquiring a very considerable knowledge, from the cases that come before us, of the activities and the prevalence of secret societies and, in particular, in this town of Ipoh. Every day, or almost every day, week after week, and month after month, I open my morning paper and this is the sort of thing I read (I know it would not be evidence in the case when the accused was being prosecuted for the offence but it is a sample of what is common knowledge): (His Lordship reads three items from the *Straits Times* of 16th June).

Singapore. Monday.

A Singapore cook who 'never had time' for his 19-year-old son, wept today as he gazed at the boy's battered body in the General Hospital mortuary.

His son was Tim Chiam, 19, on police records as a member of the notorious 24 secret society group, whose

mutilated body was found in a lane off Kim Keat Avenue last night.

Thirteen rival gangsters had pounced on him as he strolled towards a football field shortly after he had taken his dinner. An axe, aerated water bottles and wooden clubs were used in the attack, which is believed to be a continuation of the blood feud between the 08 and 24 groups."

"Ipoh. Monday.

Police last night moved against the powerful secret societies operating in Ipoh with a big round-up of suspected gangsters all over town.

Eighteen persons were detained.

The crackdown follows what is believed to be a gang war between two powerful groups who control the extortion racket in Ipoh.

Lined up on one side is the Pak Sin, with its stronghold in Guntong New Village. Opposing them are the Seong Foo Sun and Loong Pak Fu who operate in Pasir Pinji New Village and the old town area.

The current gang war is believed to have been touched off by the Pak Sin when a rival was slashed in a clash in Leech Street on Tuesday night."

The "Pak Fu" is the society which the appellant in this case told the victim he belonged to. I turn over the page.

"Kuala Lumpur. Monday.

Thirty-nine tappers arrived here yesterday from Kuala Kangsar to see the centenary celebration.

When they left all were footsore and weary. But 10 were more sore than the rest. They had been beaten up by a gang of between 10 and 20 men outside Bukit Bintang Park."

And so it goes on, and almost every day of the week we read of gangs of young thugs entering private dwellings, shops, coffee houses and so forth and inflicting very severe injuries upon their victims.

Now, how does that connect with what I have just said about a class of cases in which although no violence is used violence is undoubtedly involved? Because it is purely fortuitous that in a case of this kind no violence is used. The threat itself is sufficient. These gangsters have gained the upper hand over law-abiding citizens who are so terrified of them that they do not dare to resist their demands. We all know perfectly well what would happen to any member of the public who refused to play the game according to the secret society rules. We read day after day of the finding of arsenals of weapons—exceedingly dangerous and often lethal weapons—belonging to these gangsters. They have only got to go into a shop and demand a sum of money which is a multiple of three, like \$36 or \$108, and the implied threat is sufficient because those are the numbers which are used by these secret societies in their extortion demands; and naturally no actual violence or

brutality is used for the simple reason that the victim of the demand is not going to run the risk, for the sake of a few dollars, of having himself carved up with parangs or battered with bicycle chains. In that class of cases, then, as it appears to me, the thug who has not had occasion to implement his threat of violence deserves corporal punishment just as much as if he had inflicted it.

For these reasons, the appeal against sentence is dismissed.

Appeal dismissed.

FOO TIANG KWANG v. PUBLIC PROSECUTOR

[A.Cr.J. (Smith J.) March 2, 1959]

[K.L.—Criminal Appeal No. 2 of 1959]

Criminal Law and Procedure—Fraudulently inducing cash payment by false pretence—Obtaining blood for transfusion—Charge for cheating under Penal Code s.420.

The appellant was convicted and sentenced on a charge under section 420 of the Penal Code with cheating a woman by fraudulently inducing her to hand over \$300 in cash by falsely pretending to her that he was in a position to obtain blood for transfusion to her husband. The facts of the case were that the complainant's husband was a patient in the District Hospital, Klang. As there was no blood of his group in the blood bank, the complainant was told to look for a blood-donor or buy blood. The appellant came to see her one day and said that there was blood available and that it would cost her \$300, whereupon she paid the appellant \$300 by instalments. As a result the appellant approached an Indian acquaintance to give blood for one of his (appellant's) relatives. The acquaintance did so and the blood was administered to the complainant's husband.

Held: on these facts the complainant was in no way cheated by the appellant. She paid the money for a pint of blood to be administered to her husband and the appellant caused it to be supplied to her husband, thereby fulfilling his part of the transaction.

Appeal allowed. Refund of \$300 compensation ordered.

MAGISTRATE'S APPEAL.

David Anthony for the appellant.

Harun bin Hj. Idris (Federal Counsel) for the respondent.

Smith J.: The appellant was charged under section 420 of the Penal Code with cheating a woman by fraudulently inducing her to hand over \$300 in cash by falsely pretending to her that he was in a position to obtain blood for transfusion to her husband.

The facts of the case were that the complainant's husband was a patient in the District Hospital, Klang. There was no blood of this group in the blood bank. The complainant